



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Parts 36 and 42

RIN 2900-AP78

Federal Civil Penalties Adjustment Act Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Federal Civil Monetary Penalties Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, sets forth a formula increasing the maximum statutory amounts for civil monetary penalties and requires federal agencies to give notice of the new maximum amounts by regulation. Accordingly, this document gives notice that the Department of Veterans Affairs (VA) is increasing maximum civil monetary penalties from \$10,000 to \$21,563 for false loan guaranty certifications and from \$5,500 to \$10,781 for fraudulent claims or fraudulent statements in any VA program.

DATES: Effective Date: This interim final rule is effective [Insert date of publication in the Federal Register].

Comment Date: Comments must be received on or before [insert date 60 days after date of publication in the Federal Register].

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulation Policy and Management (02REG),

Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AP78, Federal Civil Penalties Adjustment Act Amendments." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Bill Russo, Director, Office of Regulations Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 386-6406.

SUPPLEMENTARY INFORMATION:

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Sec. 701 of Public Law 114-74), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) (Public Law 101-410), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

The 2015 Act requires agencies to: (1) adjust the level of civil monetary penalties with an initial "catch-up" adjustment through an interim final rulemaking (IFR); and (2) make subsequent annual adjustments for inflation. Catch-up adjustments are to

be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year of the previous adjustment, and the October 2015 CPI-U. Annual inflation adjustments are to be based on the percent change between the October CPI-U preceding the date of the adjustment, and the prior year's October CPI-U.

The Executive Office of the President Office of Management and Budget (OMB) published guidance on February 24, 2016, advising the heads of federal agencies how to implement the 2015 Act. See <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>. In the guidance, OMB provided the applicable multipliers that federal agencies should use when calculating their first adjustment. Agencies may not increase penalty levels by more than 150 percent of the corresponding levels in effect on November 2, 2015. Note: The 150 percent limitation is on the amount of the increase; therefore, the adjusted penalty level(s) are up to 250 percent of the level(s) in effect on November 2, 2015.

Civil Monetary Penalties in the Home Loan Guaranty Program

The Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 authorized VA to levy civil monetary penalties against lenders that make false certifications in VA's home loan guaranty program. Pub.L. 99-576, sec. 402, Oct. 28, 1986, codified at 38 U.S.C. § 3710(g)(4). Any lender that knowingly and willfully makes a false certification related to VA's credit information and loan processing standards is liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed \$10,000, whichever is greater. See 38 CFR 36.4340(k). The applicable

multiplier for a law enacted in 1986 is 2.15628. Therefore, this rule increases the civil penalty found at 38 CFR 36.4340(k)(1)(i) and 36.4340(k)(3) to the greater of two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed \$21,563.

Program Fraud Civil Remedies

The Program Fraud Civil Remedies Act of 1986 authorized federal agencies to establish civil penalties and assessments against persons who commit fraud in federal programs. See Pub.L. 99-509, secs. 6101-6104, Oct. 21, 1986. For participants in VA's programs, a person is subject to a civil penalty (in addition to any other remedy that may be prescribed by law) for making a fraudulent claim or statement, as described in 38 CFR 42.3. .

The Program Fraud Civil Remedies Act of 1986 originally established the amount of the civil penalty at \$5,000. See Pub.L. 99-509, secs. 6101-6104, Oct. 21, 1986. VA increased the amount to \$5,500 in 1990, in accordance with the Inflation Adjustment Act. VA has not changed the amount other than when it implemented the adjustment due to the Inflation Adjustment Act.

As stated above, OMB has advised that the applicable multiplier for laws enacted in 1986 is 2.15628. Rather than applying the multiplier to \$5,500, however, VA is applying the multiplier to the amount originally established in the Program Fraud Civil Remedies Act of 1986, \$5,000. The initial adjustment from \$5,000 to \$5,500 is not to be taken into account. This is because, under the 2015 Act, agencies are to exclude from the catch-up prior inflationary adjustments implemented under the Inflation Adjustment Act.

Therefore, as of the effective date of this rule, the amounts found at 38 CFR 42.3(a)(1) and 38 CFR 42.3(b)(1) are amended from \$5,500 to \$10,781.

Updating Authority Section, 38 CFR Part 42

VA is also updating the language to account for the codification of the authority cited by 38 U.S.C. Ch. I, Pt. 41, Refs & Annos. Currently, the language states that the cited authorities are "...to be codified at 31 U.S.C. 3801-3812." The authorities are now codified at 31 U.S.C. 3801-3812. Consequently, VA is removing "to be codified" and replacing it with "codified".

Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary of Veterans Affairs finds, with good cause, that notice and public procedure thereon are unnecessary. This interim final rule merely calculates the adjustment percentages, specified by the 2015 Act, for codification as a VA regulation.

This final rule does not impose any additional responsibilities on any entity and therefore requires no adjustment to any entity's current operations, policies, or practices. Instead, it simply adjusts the amount of each civil monetary penalty as prescribed by the 2015 Act.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to

select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by OMB, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined that it is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before

issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Accordingly, no proposed rulemaking was required in connection with the adoption of this final rule. Pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.114, Veterans Housing—Guaranteed and Insured Loans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert D. Snyder, Chief of Staff, Department of Veterans Affairs, approved this document on May 31, 2016, for publication.

Dated: June 16, 2016

Jeffrey Martin
Office Program Manager
Office of Regulation Policy & Management
Office of the Secretary
Department of Veterans Affairs

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs-housing and community development, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

For the reasons set out in the preamble, VA amends 38 CFR parts 36 and 42 as follows:

PART 36 – LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and as otherwise noted.

2. In § 36.4340, amend paragraphs (k)(1)(i) and (k)(3) by removing “\$10,000” and adding, in its place, “\$21,563” and by revising the authority citation at the end of the section to read as follows:

§ 36.4340 Underwriting standards, processing procedures, lender responsibility, and lender certification.

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(Authority: 28 U.S.C. 2461; 38 U.S.C. 3710)

PART 42—STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT

3. The authority citation for part 42 is revised to read as follows:

Authority: Pub.L. 99-509, secs. 6101-6104, 100 Stat. 1874, codified at 31 U.S.C. 3801-3812.

4. In § 42.3, amend paragraphs (a)(1) and (b)(1) by removing “\$5,500” and adding, in its place, “\$10,781”, and by revising the authority citation at the end of the section, to read as follows:

§ 42.3 Basis for Civil Penalties and Assessments

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(Authority: 28 U.S.C. 2461; 31 U.S.C. 3802)

[FR Doc. 2016-14592 Filed: 6/21/2016 8:45 am; Publication Date: 6/22/2016]